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AUG 26 2002

By Deputy *[Signature]*



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KATHLEEN M. HOUSE,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT OF
FISH & WILDLIFE AND THE STATE OF
WASHINGTON,

Defendants.

C98-5262
Case No. ~~C97-5708~~ FDB

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

This lawsuit arises out of a Kathleen M. House's ("Ms. House") employment with the Washington State Department of Fish & Wildlife ("Department"). Ms. House asserts violations of the Age Discrimination in Employment Act ("ADEA") and Title VII. Defendants move that this Court grant its Motion for Summary Judgment and dismiss Ms House's complaint in its entirety under Federal Rule of Civil Procedure 56(c). (Dkt. #87) The Court, after considering Defendants' motion and Plaintiffs' response finds that Defendants' motion should be **GRANTED**.

BACKGROUND

Ms. House was hired by the Washington State Department of Fish & Wildlife as a Computer Analyst Programmer ("CAP") in March of 1993. She remained employed in this

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1 capacity until July of 1997 when her position was eliminated. Defendants explain that Ms. House's
2 position was eliminated in a reduction in force ("RIF") action, due to lack of funds. Ms. House
3 disagrees with the Department's explanation and alleges in her complaint that she was subjected to
4 age and gender discrimination and the elimination of her position was in retaliation for grievances
5 she had filed.

6 Prior to bringing this lawsuit, Ms. House appealed the RIF action to the State of Washington
7 Personnel Appeals Board ("PAB"). Ms. House alleges the same discrimination and retaliation that
8 was at issue in the PAB. The PAB conducted an evidentiary hearing and ultimately concluded that
9 Ms. House's allegations were not substantiated by the investigation. Similarly, the Equal
10 Employment Opportunity Commission ("EEOC") was "unable to conclude that the information
11 obtained establishes violations of the statutes."

12 Defendants argue that summary judgment is appropriate because Ms. House's ADEA claim
13 is barred by the Eleventh Amendment Immunity and her retaliation and sex discrimination claims
14 are barred by the doctrines of res judicata ("claim preclusion"), and collateral estoppel ("issue
15 preclusion"). Alternatively, Defendants argue that even if the Court does not find that Ms. House's
16 claims are barred, they urge the Court to find that she failed to establish facts sufficient to withstand
17 summary judgment. Ms. House resists this motion and argues summary judgment is not appropriate
18 here because a genuine issue of material fact has been established.

19 STANDARD FOR SUMMARY JUDGMENT

20 Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories,
21 and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to
22 any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R.
23 Civ. P. 56(c). The Court recognizes that the party seeking summary judgment bears the initial
24 burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*,
25 477 U.S. 317, (1986). The plain language of Rule 56(c), however, mandates the entry of summary

1 judgment against a party who fails to make a showing sufficient to establish the existence of an
2 element essential to that party's case, and on which that party will bear the burden of proof at trial.
3 *Id.* at 322.

4 DISCUSSION

5 The Court agrees with Defendants that Ms. House's ADEA claim is barred by Eleventh
6 Amendment Immunity pursuant to the Supreme Court's ruling in *Kimel v. Florida Bd. of Regents*,
7 528 U.S. 62 (2000). In *Kimel*, the Supreme Court expressly held that the ADEA did not abrogate
8 states' Eleventh Amendment immunity. *Id.* Thus, Ms. House is barred from bringing an ADEA
9 claim against the State of Washington because the State has not waived its Eleventh Amendment
10 Immunity from suit. Even if the State had waived its Eleventh Amendment Immunity from suit,
11 Ms. House has failed to establish a prima facie case of age discrimination.

12 The Court does not agree, however, that Ms. House's Title VII claims of gender
13 discrimination and retaliation are precluded by the doctrines of res judicata ("claim preclusion"), or
14 collateral estoppel ("issue preclusion") because the decision issued by the PAB was not "rendered
15 or reviewed by a court." *McInnes v. State of California*, 943 F.2d 1088, 1093 (9th Cir. 1991)(in a
16 Title VII action a prior state decision enjoys preclusive effect only if rendered or reviewed by a
17 court).

18 The plaintiff in *McInnes* filed her complaint in federal district court alleging the same Title
19 VII causes of action that were at issue in her case before the state personnel board. *Id.* at 1092.
20 Ultimately, the federal district court held that the personnel board's decision was binding on the
21 parties under the doctrine of collateral estoppel. *Id.* The Court of Appeals reviewed relevant
22 Supreme Court precedent and reversed the district court's decision finding that the district court
23 misapplied the doctrine of collateral estoppel. *Id.* The Court of Appeals specifically found that
24 unreviewed state administrative decisions "lack preclusive effect in subsequent Title VII actions
25 regardless of any preclusive effect any state law might have on them." *Id.* at 1093-94.

1 Ms. House, like the plaintiff in *McInnes*, is alleging the same discrimination and retaliation
2 that was at issue before the state personnel board. Considering a court never reviewed the PAB's
3 decision in Ms. House's case, the Court, applying federal law, must find that Ms. House is not
4 precluded from bringing her Title VII claims to federal court now.

5 Regardless, Defendants have convinced the Court that Ms. House has not established
6 sufficient facts to withstand summary judgment on her Title VII claims. Although Ms. House
7 argues that the Department retaliated against her for having lodged complaints, she has failed to
8 establish a causal link between her protected activity and the Department's decision to eliminate her
9 position. *See Cohen v. Fred Meyer, Inc.*, 686 F.2d 793, 796 (9th Cir. 1982).

10 Ms. House's allegations of gender discrimination are equally insufficient to overcome
11 summary judgment. Ms. House provides no direct or circumstantial evidence to support her
12 allegation that as a female she has experienced "disparate access to computer equipment, software,
13 and technical services" or was subjected to a "hostile work environment." Ms. House simply
14 disregards the Department's legitimate, nondiscriminatory reason for its RIF action, and alleges
15 violations of the law. Mere allegations are not sufficient for this Court to find a genuine issue of
16 material fact for trial. Accordingly, the Court must dismiss this claim.

17 CONCLUSION

18 Ms. House failed to establish sufficient facts to withstand summary judgment and dismissal
19 of her claims. Accordingly, Defendants' Motion for Summary Judgment (Dkt. #87) is **GRANTED**.
20 Plaintiffs' Petition to File Late Response to Summary Judgment (Dkt. #91) **STRICKEN** from the
21 Court's Calendar as **MOOT** and the Clerk is directed to send a copy of this Order to Plaintiff and
22 Defendants. IT IS SO ORDERED.

23 DATED this 26 day of August, 2002.

24 
25 FRANKLIN D. BURGESS
26 UNITED STATES DISTRICT JUDGE

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United States District Court
for the
Western District of Washington
August 26, 2002

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:98-cv-05262

True and correct copies of the attached were mailed by the clerk to the following:

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